An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-360

No. COA21-695

Filed 17 May 2022

Mecklenburg County, No. 19CVS21720

MEDPORT, INC., Plaintiff,

v.

JOHN L. HAZLEHURST and HAZLEHURST and BLAKE, PLLC, Defendants.

Appeal by defendants from order entered 20 September 2021 by Judge Lisa C. Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 26 April 2022.

Offit Kurman, P.A., by Zipporah Basile Edwards and Robert B. McNeill, for defendants-appellants.

James, McElroy & Diehl, P.A., by John R. Buric, John. R. Brickley, and Preston O. Odom, III, for plaintiff-appellee.

GORE, Judge.

¶ 1 On 6 November 2019 plaintiff Medport, Inc., initiated this action to recover damages from one or more negligent acts of attorney John L. Hazlehurst and his law firm, Hazlehurst and Blake, LLC, (collectively, "defendants"), arising from a commercial real estate transaction.

¶ 2 In 2016, defendants represented a buyer in connection with the purchase of

commercial property in Mecklenburg County. Plaintiff was a third-party lender to the seller. No attorney-client relationship existed between plaintiff and defendants. In the instant case, plaintiff asserted claims for negligence and gross negligence, alleging defendants recorded a forged satisfaction of a deed of trust against the property for which plaintiff was the beneficiary. Plaintiff contends defendants made such recordation despite notice that the satisfaction was potentially fraudulent.

¶ 3 On 10 January 2020 defendants filed a Motion to Dismiss, which was denied by order entered 2 March 2020. Defendants filed an Answer on 17 March 2020. Defendants moved for summary judgment on plaintiffs' claims on 15 March 2021, which the trial court heard on 5 April 2021. The trial court subsequently entered an order denying defendants' motion on 20 September 2021, "[s]pecifically, because [p]laintiff is suing under a theory of common law negligence, rather than professional negligence, which only requires that the defendants breach a duty of care as to a reasonably foreseeable plaintiff that caused damages . . . ." Defendants timely filed written notice of appeal.

¶ 4 An order denying a motion for summary judgment is not a final judgment for purposes of appeal. Rather, such an order is interlocutory because it "does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citation omitted). "The denial of a motion for summary judgment is

interlocutory and not immediately appealable unless it affects a substantial right." *Moody v. Able Outdoor, Inc.*, 169 N.C. App. 80, 83, 609 S.E.2d 259, 261 (2005) (citation omitted); *see also* N.C. Gen. Stat. §§ 1-277(a) and 7A-27(b)(3)(a) (2021).

¶ 5 Our Supreme Court has stated, "the substantial right test for appealability of interlocutory orders is more easily stated than applied." *Waters v. Qualified Pers., Inc.*, 294 N.C. 200, 208, 240 S.E.2d 338, 343 (1978). "No hard and fast rules exist for determining which appeals affect a substantial right." *Estrada v. Jaques*, 70 N.C. App. 627, 640, 321 S.E.2d 240, 249 (1984). "In order to resolve the question of the existence of a substantial right it is usually necessary to consider the particular facts of a case and the procedural context in which the interlocutory order arose." *Barnes v. St. Rose Church of Christ, Disciples of Christ*, 160 N.C. App. 590, 591, 586 S.E.2d 548, 550 (2003). "In determining the appealability of interlocutory orders under the substantial right exception, a two-part test has evolved: (1) the right itself must be substantial, and (2) the enforcement of the substantial right must be lost, prejudiced or be less than adequately protected by exception to entry of the interlocutory order." *Beroth Oil Co. v. N.C. Dep't of Transp.*, 256 N.C. App. 401, 411, 808 S.E.2d 488, 496-97 (2017) (quotation marks omitted).

¶ 6 This Court has consistently held that denial of a motion for summary judgment does not affect a substantial right except in limited situations involving claims of sovereign immunity, *Thompson v. Town of Dallas*, 142 N.C. App. 651, 653, 543 S.E.2d

901, 903 (2001), the doctrines of *res judicata* or collateral estoppel, *Hedgepeth v. Parker's Landing Property Owners Ass'n, Inc.*, 236 N.C. App. 56, 65-66, 762 S.E.2d 865, 871 (2014), or the possibility of inconsistent verdicts, *McKenzie v. Charlton*, 262 N.C. App. 410, 412, 822 S.E.2d 159, 161 (2018).

¶ 7 Defendants argue they are exempt/immune from a negligence claim against them for their actions in representing their client's interests because plaintiff and defendant never had an attorney-client relationship, and plaintiff's claims do not fall into any of the limited exceptions to the general rule requiring an attorney-client relationship. Thus, it is defendants' contention that the right not to be sued will be lost if not addressed expeditiously, and that right cannot be reclaimed after a full trial on the merits and a final judgment. Further, a post-trial appeal cannot "adequately protect" their substantial rights, which will be lost without immediate review.

¶ 8 In support of their position, defendants cite several cases pertaining to sovereign/public official immunity, lack of subject matter jurisdiction, and professional malpractice cases predicated upon the theory of an attorney's negligence. However, defendants' immunity/exemption from suit contention falls short. As stated in the trial court's Order, plaintiff asserted claims under a theory of common law negligence, not professional malpractice. Moreover, defendants' prior representation of their client was not undertaken in a judicial or quasi-judicial capacity, where the

issue of "immunity" would be applicable. *See Sharp v. Gulley*, 120 N.C. App. 878, 879-80, 463 S.E.2d 577, 578 (1995) (a civil action against an attorney acting as court-appointed referee was barred by judicial immunity).

¶ 9 In this case, the Order does not implicate any of the exceptions for immediate appealability, and thus, does not affect a substantial right. Further, mere avoidance of a trial or rehearing on a motion is not a substantial right. *Waters*, 294 N.C. at 208, 240 S.E.2d at 344. Neither is the avoidance of incurring significant litigation costs. *Ward v. Wake Cnty. Bd. of Educ.*, 166 N.C. App. 726, 732, 603 S.E.2d 896, 901 (2004).

¶ 10 Defendants also petition this Court to issue our writ of certiorari pursuant to § 7A-32(c) and Rule 21 of the North Carolina Rules of Appellate Procedure to review the Order in the alternative to a determination that their substantial rights are affected. Defendants also request, in the alternative, that we exercise appellate jurisdiction to review the Order pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure to "prevent manifest injustice to a party, or to expedite decision in the public interest . . . ." N.C.R. App. P. 2.

¶ 11 "To meet the pleading requirements for a petition for a writ of certiorari, a party must demonstrate: (1) no appeal is provided at law; (2) a *prima facie* case of error below; and (3) merit to its petition." *House of Raeford Farms, Inc. v. Raeford*, 104 N.C. App. 280, 284, 408 S.E.2d 885, 888 (1991) (citations omitted). Additionally, "the appellate courts of this State in their discretion may review an order of the trial

court, not otherwise appealable, when such review will serve the expeditious administration of justice or some other exigent purpose." *Stanback v. Stanback*, 287 N.C. 448, 453, 215 S.E.2d 30, 34 (1975) (citations omitted).

¶ 12 Upon careful review of the record, both parties' briefs, and the authorities citied therein, we discern no merit to the petition that would warrant immediate appellate review. Further, no extraordinary circumstances have been shown that would require this Court to permit review pursuant to Rule 2 of the North Carolina Rules of Appellate Procedure. In our discretion, defendants' petition for writ of certiorari is denied.

DISMISSED.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).